

## 48A C.J.S. Judges § 312

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 2. Mode and Sufficiency of Raising Objection

###### a. General Considerations

## § 312. By whom made

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

**Whether the affidavit must be made by the party, or may be made either by the party or by the attorney, depends on the terms of the statute.**

In some jurisdictions, the affidavit for disqualification of a judge may be made either by the party<sup>1</sup> or by the party's attorney.<sup>2</sup> In other jurisdictions, the affidavit must be made by the party, and not by an attorney or agent,<sup>3</sup> although the application may be made by the attorney.<sup>4</sup>

Where the statute so requires, all parties defendant must join in the affidavit, unless it appears that one who does not join is merely a nominal party or has defaulted,<sup>5</sup> while in some jurisdictions, at least a designated percentage of the parties must join the application.<sup>6</sup> In case of a corporation, the affidavit may be made by one of its agents duly authorized to make it.<sup>7</sup>

### *Estoppel.*

A purported application for a change of venue from a judge, filed in derogation of statute by the attorney for defendant does not estop defendant from thereafter filing proper application in defendant's own behalf.<sup>8</sup>

Footnotes

- 1 Kan.—Hulme v. Wolesslagel, 208 Kan. 385, 493 P.2d 541 (1972).  
Ky.—Williams v. Howard, 270 Ky. 728, 110 S.W.2d 661 (1937).
- 2 Ky.—Williams v. Howard, 270 Ky. 728, 110 S.W.2d 661 (1937).  
Mont.—State ex rel. Amsterdam Lumber, Inc. v. District Court of Eighteenth Judicial Dist. In and For Gallatin County, 163 Mont. 182, 516 P.2d 378 (1973).
- 3 U.S.—Ramirez v. Elgin Pontiac GMC, Inc., 187 F. Supp. 2d 1041 (N.D. Ill. 2002).  
Kan.—Collins v. Kansas Milling Co., 210 Kan. 701, 504 P.2d 586 (1972).  
N.M.—Coca v. New Mexico Health and Social Services Dept., 89 N.M. 558, 1976-NMCA-092, 555 P.2d 381 (Ct. App. 1976).  
**Affidavits signed by counsel and by juror insufficient**  
U.S.—U.S. v. Battle, 235 F. Supp. 2d 1301 (N.D. Ga. 2001).
- 4 Ind.—Firestone v. Harshberger, 121 Ind. 201, 22 N.E. 985 (1889).
- 5 N.D.—Huether v. Havelock Equity Exch., 52 N.D. 786, 204 N.W. 828 (1925).  
Wis.—Dutcher v. Phoenix Ins. Co., 37 Wis. 2d 591, 155 N.W.2d 609 (1968).
- 6 Ill.—Board of Ed. of Tp. High School, Dist. No. 201 v. Morton Council, West Suburban Teachers Union, Local 571, 50 Ill. 2d 258, 278 N.E.2d 769 (1972).
- 7 Ind.—State ex rel. 1625 E. Washington Realty Co. v. Markey, 212 Ind. 59, 7 N.E.2d 989 (1937).  
Or.—State Capitol Reconstruction Commission v. McMahan, 160 Or. 83, 83 P.2d 482 (1938).
- 8 Ind.—Marion City Court v. State ex rel. Sample, 243 Ind. 371, 185 N.E.2d 524 (1962).

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